

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

MARK STEVENS MITCHEM,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

No. 1:15CV227 JAR

MEMORANDUM AND ORDER

This matter is before the Court on Mark Mitchem's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. He brings three claims for relief: (1) that he is entitled to relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015), (2) that his counsel was ineffective for failing to file a notice of appeal, and (3) that his predicate offenses used to calculate his criminal history score should not have been used.

On June 15, 2015, movant pled guilty to one count of felon in possession of a firearm. On September 18, 2015, the Court sentenced him to 28 month's imprisonment. Movant's sentence was not enhanced under the Armed Career Criminal Act ("ACCA"), nor was it enhanced under Chapter Four of the United States Sentencing Guidelines.

On January 21, 2016, the Court entered an Order directing the Federal Public Defender to review movant's § 2255 motion and notify the Court whether it would file an amended motion on his behalf. However, the Court now finds that the Order was entered in error because movant alleges that the Assistant Federal Defender who represented him was ineffective. Therefore, the Court will vacate the January 21, 2016, Order.

Under Rule 4 of the Rules Governing § 2255 Cases, the Court is required to review the motion and dismiss it if it plainly appears that movant is not entitled to relief. After reviewing the motion, the Court finds that movant's *Johnson* claim must be dismissed.

In *Johnson*, the Court held that imposing an increased sentence under the residual clause of the ACCA violates the Constitution's guarantee of due process. *Id.* at 2557. Because movant was not sentenced under the ACCA, *Johnson* does not provide him with relief. As a result, ground one of the motion is dismissed. *See* 28 U.S.C. § 2255 Rule 4.

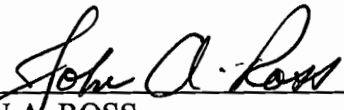
The Court will issue a separate Case Management Order for grounds two and three.

Accordingly,

IT IS HEREBY ORDERED that ground one of the motion is **DISMISSED**.

IT IS FURTHER ORDERED that the Court's Order dated January 21, 2016, [ECF No. 2] is **VACATED**.

Dated this 27th day of January, 2016.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE